

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 585/2006

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : 12th June, 2007.

Heard Shri Deshpande for the appellants.

Appellants are the original defendants. A suit was filed by the plaintiff Sahebrao against defendant Dinkar for partition and separate possession of his half share in field Survey No. 87. The field Survey No. 87 was admittedly owned and possessed by one Shamrao who was the father of Sahebrao and Dinkar. The plaintiff and the defendant are the step brothers. Shamrao had sold field Survey No. 87 in favour of one Pralhad Thakare in the year 1960. Sahebrao and Dinkar had challenged the said alienation in favour of Pralhad Thakare on the ground that there was no legal necessity to alienate the said property which was the joint family property of the parties. Though the suit was dismissed, an appeal filed by Sahebrao and Dinkar against the judgment of the trial Court was allowed. The decree was executed by Sahebrao

and Dinkar, and Dinkar was put in possession of the field S. No. 87. In this background the plaintiff filed present suit for partition and separate possession of the suit property.

The defendant Dinkar denied the claim of the plaintiff and pleaded that the suit filed by the plaintiff was not maintainable, as the plaintiff did not include one more property bearing field Survey No. 22/1 which Sahebrao had purchased in the name of his minor son. According to the defendant, property was purchased from the income of the field property bearing Survey No.87 and, therefore, other property was the joint family property and since Sahebrao had not sought partition of the other field, suit for partition was not maintainable.

The trial as well as the appellate Courts did not find favour with the appellants. Both the Courts held that the field Survey No. 22/1 was self acquired property of Sahebrao who had purchased it in the name of his minor son and the same was not purchased from the income of field Survey No. 87. For recording the aforesaid findings, both the Courts considered the evidence tendered by the parties on record and rightly placed initially burden on the defendant to prove the plea which he had raised. The Courts considered the fact that Sahebrao was residing at Khanapur in Achalpur Tahsil for about 7 to 8 years and since 1992, he started residing at

Surat and was serving in a mill. The Courts observed that son of Sahebrao is aged 25 years and the field Survey No. 22/1 was purchased by Sahebrao after Sahebrao and Dinkar had started residing separately. The Courts, on appreciation of evidence on record, held that it was difficult to accept that the families of Sahebrao and Dinkar were joint when the field Survey No. 22/1 was purchased and there was no document to show that Dinkar was giving income of field Survey No. 87 to Sahebrao. The Courts, therefore, concurrently held that there was no evidence on record to show that the field Survey No. 22/1 was purchased from the joint family income.

Findings recorded by both the Courts are pure findings of facts based on a proper appreciation of the material evidence adduced by the parties. The findings, therefore, do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no orders as to costs.

JUDGE